

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY CARACAS PRIORITY

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E.O. 11652: N/A

TAGS: EWWT, VE

SUBJECT: SHIPPING: LYKES STEAMSHIP COMPANY REQUEST FOR
ASSOCIATE STATUS WITH CAVN

REF: A) CARACAS 5540 B) CARACAS 5293

1. DEPARTMENT AGREES WITH EMBASSY THAT QUESTION OF LYKES'
PARTICIPATION IN US-VENEZUELA TRADE SHOULD BE RAISED WITH
SENIOR GOV OFFICIALS, PER PARA 5 OF REF B. WE BELIEVE
EMBASSY SHOULD MAKE FOLLOWING POINTS TO GOV OFFICIALS:

A. LYKES WISHES TO OPERATE 2 SHIPS PER MONTH FROM GREAT
LAKES PORTS TO VENEZUELA AND COLOMBIA. LYKES HAD ORIGIN-
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ALLY INTENDED TO INITIATE SERVICE IN JUNE BUT DUE TO IN-
ABILITY TO WORK OUT VENEZUELAN ARRANGEMENTS IN TIME, HAS
NOW ADVANCED STARTING DATE TO MID-AUGUST. GREAT LAKES
SERVICE IS OBVIOUSLY SEASONAL, AND LYKES MUST CONCLUDE
ARRANGEMENTS FOR THIS YEAR'S SERVICE IN VERY NEAR FUTURE.

B. LYKES OFFICERS, INCLUDING PRESIDENT, WILLING TO COME
TO VENEZUELA ON SHORT NOTICE TO DISCUSS ARRANGEMENTS,
INCLUDING POOLING POSSIBILITIES, ASSOCIATE STATUS, AND
INTERIM WAIVERS. HOWEVER, DESPITE NUMEROUS LETTERS,

CABLES, AND PHONE CALLS TO CAVN (CAPT. RIOS), LYKES HAS RECEIVED NO INDICATION OF CAVN WILLINGNESS TO DISCUSS ARRANGEMENTS. IN FACT, LYKES HAS RECEIVED NO RESPONSES TO ITS LAST THREE TELEXES TO CAPT. RIOS. EARLIER MESSAGES FROM CAVN STATED THAT CAVN NOT IN POSITION TO HOLD DISCUSSIONS WITH LYKES.

C. DESPITE CAVN'S CONTENTION (REF B - PARA 1) THAT GREAT LAKES ROUTE IS PART OF EAST COAST TRAFFIC, IN ALL OTHER TRADES GREAT LAKES ARE CONSIDERED SEPARATE PORT RANGE WITH OWN SEPARATE CONFERENCES. (FURTHERMORE, THERE IS STRONG CONGRESSIONAL INTEREST IN DEVELOPING AND DEFINING GREAT LAKES AS U.S. "FOURTH COAST".) NEVER- THE LESS, LYKES IS WILLING TO DISCUSS POOLING ARRANGEMENT WHICH RECOGNIZES CAVN'S EXISTING OPERATIONS. LYKES ALSO POINTS OUT THAT GREAT LAKES SERVICE WOULD NOT DRAW FROM NATURAL TRIBUTARIES OF EAST COAST TRAFFIC AND WOULD INDEED GENERATE SUBSTANTIAL ADDITIONAL TRAFFIC BY STIMULATING INCREASED TRADE, PULLING IN TRAFFIC WHICH NOW EXITS U.S. VIA GULF, AND EVEN PICKING UP CARGO NOW CARRIED BY AIR BECAUSE OF LACK OF DIRECT SHIP SERVICE FROM GREAT LAKES. THIS INCREASED TRAFFIC COULD BE BENEFICIAL TO OVERALL U.S.-VENEZUELA TRADE WITHOUT HURTING EXISTING CAVN POSITION.

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FICIAL TO OVERALL U.S.-VENEZUELA TRADE WITHOUT HURTING EXISTING CAVN POSITION.

D. REGARDING CAVN ASSERTION THAT SINCE IT DOES NOT SERVE GREAT LAKES, IT CANNOT HAVE PARTNER IN THAT TRAFFIC, CAVN IS ENTIRELY WELCOME TO ENTER GREAT LAKES TRADE. FACT THAT CAVN DOES NOT CHOOSE TO DO SO IS NOT VALID REASON FOR PREVENTING U.S. CARRIER FROM SERVING THAT TRADE.

E. WHILE MORE PERMANENT ARRANGEMENTS ARE UNDER DISCUSSION BETWEEN LYKES AND CAVN, WE HOPE THAT WAIVERS CAN BE GRANTED ON CASE BY CASE BASIS TO ENABLE LYKES TO START SERVICE. COLOMBIAN AUTHORITIES HAVE STATED THEIR WILLINGNESS TO GRANT SUCH WAIVERS PENDING COMPLETION OF DISCUSSIONS ON ASSOCIATE STATUS WITH COLOMBIAN LINE FLOMERCA. (IT IS DEPARTMENT'S IMPRESSION THAT WAIVERS FOR NON-EXEMPT CARGO ONLY, MENTIONED BY RIOS IN REF A, PARA 2, WOULD NOT BE SATISFACTORY; ARTICLES 12 AND 13 OF 1973 MERCHANT MARINE LAW SUGGEST THAT, AT LEAST FOR IMPORTS, EXEMPT CARGOES PROBABLY CONSTITUTE LION'S SHARE OF LINER CARGO. DEPARTMENT WOULD WELCOME EMBASSY COMMENT ON THIS POINT.)

F. BASIC PROVISIONS OF 1973 "LAW OF PROTECTION AND DEVELOPMENT OF THE NATIONAL MERCHANT MARINE" ARE (AS NOTED REF B, PARA 3) CLEARLY DISCRIMINATORY. CONSEQUENT

DIFFICULTIES IN U.S.-VENEZUELA RELATIONS HAVE BEEN
AVERTED TO DATE, HOWEVER, BY WILLINGNESS OF CAVN AND
GOV TO SANCTION ARRANGEMENTS PROVIDING FOR EQUITABLE
PARTICIPATION BY U.S. CARRIERS IN U.S.-VENEZUELA TRADES.
WE HOPE THAT CAVN AND GOV WILL TAKE SIMILARLY REASONABLE
APPROACH TO LYKES DESIRE TO ENTER GREAT LAKES-VENEZUELA
TRADE.

G. SHOULD LYKES CONCLUDE THAT IT IS BEING EFFECTIVELY
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EXCLUDED FROM US-VENEZUELA TRADES, IT IS ENTITLED UNDER
U.S. LAWS TO SEEK A VARIETY OF LEGAL REMEDIES (SEE PARA
2 BELOW). LYKES' RESORT TO THESE REMEDIES COULD CAUSE
DIFFICULTIES IN U.S.-VENEZUELAN RELATIONS WHICH IT IS IN
INTEREST OF BOTH SIDES TO AVOID. AT THE MOMENT, LYKES
WISHES TO CONTINUE SEEKING A COMMERCIAL RESOLUTION AND
AVOID PUBLICIZING ITS PROBLEMS, BUT IT REPORTS GROWING
PRESSURE FROM GREAT LAKES CONGRESSIONAL DELEGATIONS TO
PUBLICIZE THE ISSUE AND RESORT TO LEGAL REMEDIES.

2. REGARDING QUESTION RE RETALIATION IN REF B, PARA 5,
VENEZUELAN FAILURE TO ALLOW LYKES PARTICIPATION IN U.S.-
VENEZUELA TRADES COULD BE CONSIDERED DISCRIMINATORY UNDER
THREE US LAWS: MERCHANT MARINE ACT OF 1920, TRADE ACT OF
1974 AND PUBLIC RESOLUTION 17. RELEVANT PROVISIONS
OF THOSE LAWS ARE AS FOLLOWS:

A. SECTION 19 OF MERCHANT MARINE ACT ENABLES U.S.
CARRIERS OPERATING IN US TRADES TO REQUEST US FEDERAL
MARITIME COMMISSION (FMC) TO IMPOSE COUNTERVAILING
MEASURES (SUCH AS "EQUALIZING FEES") ON VESSELS OF NATIONS
WHICH DISCRIMINATE AGAINST US OR THIRD-FLAG SHIPPING.
(FMC MAY INITIATE SECTION 19 ACTION EVEN IN ABSENCE OF
OPERATOR COMPLAINTS IF IT BELIEVES SITUATION WARRANTS
SUCH ACTION.)

B. SECTION 301 OF 1974 TRADE ACT PROVIDES THAT "WHENEVER
THE PRESIDENT DETERMINES THAT A FOREIGN COUNTRY OR
INSTRUMENTALITY...ENGAGES IN DISCRIMINATORY OR OTHER
ACTS OR POLICIES WHI-H BURDEN OR RESTRICT US COMMERCE
(DEFINED TO INCLUDE SERVICES)...HE SHALL TAKE ALL APPRO-
PRIATE AND FEASIBLE STEPS WITHIN HIS POWER TO OBTAIN
THE ELIMINATION OF SUCH RESTRICTIONS..." THESE STEPS
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MAY INCLUDE IMPOSITION OF DUTIES OR OTHER IMPORT RESTRICT-

IONS ON PRODUCTS OF SUCH COUNTRY OR INSTRUMENTALITY.

C. PUBLIC RESOLUTION 17 (PR 17) REQUIRES THAT ALL EXIM-BANK-FINANCED CARGOES MUST BE CARRIED IN US-FLAG VESSELS, EXCEPT THAT US MARITIME ADMINISTRATION (MARAD) MAY

(AND ROUTINELY DOES) GRANT GENERAL WAIVERS ALLOWING RECIPIENT COUNTRY'S VESSELS TO CARRY UP TO FIFTY PERCENT WHEN MARAD IS SATISFIED THAT RECIPIENT GOVERNMENT PROVIDES "FAIR AND EQUITABLE TREATMENT" FOR US-FLAG SHIPPING. (FYI. THERE ARE APPROXIMATELY \$38.7 MILLION IN EXIM CREDITS OUTSTANDING TO VENEZUELA. HENCE WITHDRAWAL OR DENIAL OF PR 17 WAIVERS COULD BE OF SOME INTEREST TO VENEZUELAN SHIPPING LINES.)

UNDER ALL THREE LAWS, IMPLEMENTATING AGENCIES (FMC, SPECIAL TRADE REPRESENTATIVE, AND MARAD), HAVE AUTHORITY TO ACT ON OWN MOTION. HOWEVER, ACTION IS USUALLY INITIATED BY CARRIER COMPLAINT. ONCE CARRIER HAS MADE SUCH A COMPLAINT, IMPLEMENTING AGENCY IS OBLIGED TO INVESTIGATE SITUATION AND TAKE APPROPRIATE ACTION. HENCE, AS PRACTICAL MATTER, DECISION RESTS WITH LYKES ON WHETHER AND WHEN TO RESORT TO LEGAL REMEDIES WHICH COULD RESULT IN RETALIATION AGAINST VENEZUELAN SHIPS.

3. REGARDING POSSIBILITY OF BILATERAL NEGOTIATIONS RAISED IN REF A, PARA 5, DEPARTMENT AND MARAD OFFICERS WOULD CONSIDER HOLDING BILATERAL DISCUSSIONS WITH GOV AUTHORITIES IF NECESSARY TO RESOLVE EXISTING MARITIME PROBLEMS. EMBASSY SHOULD NOT, HOWEVER, GIVE GOV OFFICIALS IMPRESSION THAT ACTION TO FACILITATE LYKES' ENTRY INTO US-VENEZUELA TRADE CAN AWAIT SUCH DISCUSSIONS.

4. FYI. FOR EMBASSY BACKGROUND, DEPARTMENT'S VIEW REGARDING BILATERAL SHIPPING AGREEMENTS IS THAT COMPETITIVELY LIMITED OFFICIAL USE

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TION AMONG SHIPPING LINES BENEFITS TRADE INTERESTS AND ACCORDINGLY, THAT AGREEMENTS WHICH CONTAIN OR SANCTION CARGO SHARING ARRANGEMENTS ARE ANTICOMPETITIVE AND TEND TO PROMOTE INEFFICIENT SHIPPING SERVICES AND THUS SHOULD BE AVOIDED WHENEVER POSSIBLE. WE RECOGNIZE, HOWEVER, THAT MANY COUNTRIES DO NOT SHARE THESE VIEWS AND THAT PROTECTIONIST MEASURES OF OTHER COUNTRIES CREATE PRESSURES ON US-FLAG CARRIERS TO ENTER INTO COMMERCIAL CARGO SHARING AGREEMENTS. IN ADDITION, WE RECOGNIZE THAT IN SOME CASES BILATERAL MARITIME AGREEMENTS CAN FACILITATE COMMERCIAL ARRANGEMENTS PROVIDING FOR EQUITABLE US-FLAG PARTICIPATION IN TRADES WITH COUNTRIES ESPOUSING PROTECTIONIST SHIPPING POLICIES. HOWEVER, ONLY GOVERNMENT-TO-GOVERNMENT AGREEMENT CONTAINING SPECIFIC

PERCENTAGES FOR SHARING OF CARGO IS 1972 US-USSR MARITIME AGREEMENT, WHICH WAS REQUIRED BY EXTRAORDINARY POLITICAL AND ECONOMIC CIRCUMSTANCES. ONLY OTHER US BILATERAL MARITIME AGREEMENTS ADDRESSING ALLOCATION OF CARGO ARE THOSE WITH ARGENTINA AND BRAZIL. THOSE AGREEMENTS MERELY RECOGNIZE IN GENERAL TERMS INTENTION OF EACH PARTY THAT VESSELS OF ITS FLAG SHOULD CARRY SUBSTANTIAL PORTION OF

BILATERAL LINER CARGO, PROVIDE FOR EQUAL ACCESS TO GOVERNMENT CARGO, AND GIVE GENERAL SANCTION TO POOLING ARRANGEMENTS AFFECTING COMMERCIAL CARGO. SUCH COMMERCIAL POOLING AGREEMENTS, HOWEVER, REMAIN SUBJECT TO APPROVAL BY GOVERNMENTAL AUTHORITIES (I.E., FEDERAL MARITIME COMMISSION IN U.S.).

5. USG PRESENTLY UNCERTIAN WHETHER VENEZUELAN SITUATION WARRANTS BILATERAL AGREEMENT OF BRAZIL/ARGENTINA TYPE. DEPARTMENT AND MARAD INTEND TO STUDY SITUATION FURTHER BEFORE REACHING DEFINITE CONCLUSION. HENCE, EMBASSY LIMITED OFFICIAL USE
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SHOULD AVOID INDICATING TO GOV OFFICIALS THAT US CONSIDERING BILATERAL AGREEMENT, MUCH LESS THAT RESOLUTION OF LYKES' DIFFICULTIES CAN AWAIT SUCH AN AGREEMENT. END FYI. VANCE

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